

1-1 By: Harper-Brown, Ratliff H.B. No. 1824
1-2 (Senate Sponsor - Hancock)
1-3 (In the Senate - Received from the House May 6, 2013;
1-4 May 8, 2013, read first time and referred to Committee on
1-5 Intergovernmental Relations; May 16, 2013, reported favorably by
1-6 the following vote: Yeas 4, Nays 0; May 16, 2013, sent to
1-7 printer.)

1-8 COMMITTEE VOTE

1-9		Yea	Nay	Absent	PNV
1-10	Hinojosa	X			
1-11	Nichols			X	
1-12	Garcia	X			
1-13	Paxton	X			
1-14	Taylor	X			

1-15 A BILL TO BE ENTITLED
1-16 AN ACT

1-17 relating to the operation of master mixed-use property owners'
1-18 associations.

1-19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-20 SECTION 1. Section 215.003, Property Code, is amended to
1-21 read as follows:

1-22 Sec. 215.003. APPLICABILITY OF CHAPTER 209. Chapter 209
1-23 does not apply to [Sections 209.007, 209.008, 209.011, and 209.012
1-24 apply only to single-family residential properties governed by] a
1-25 property owners' association subject to this chapter.

1-26 SECTION 2. Section 215.008, Property Code, is amended by
1-27 adding Subsection (d) to read as follows:

1-28 (d) Notwithstanding any provision of the certificate of
1-29 formation, declaration, or bylaws to the contrary, the declaration
1-30 and any supplementary declaration, including amendments,
1-31 modifications, or corrections, may be amended by a simple majority
1-32 of the eligible votes being cast in favor of the amendment.

1-33 SECTION 3. Chapter 215, Property Code, is amended by adding
1-34 Section 215.0135 to read as follows:

1-35 Sec. 215.0135. ASSOCIATION RECORDS. (a) To the extent of
1-36 any conflict or inconsistency, this section prevails over other
1-37 provisions of law and the dedicatory instruments of a property
1-38 owners' association subject to this chapter. This section is the
1-39 exclusive procedure for a property owner to inspect the books and
1-40 records of the association.

1-41 (b) Except as provided by Subsection (c) or (j), a property
1-42 owners' association shall, on written request as provided by this
1-43 section, make the books and records of the association open to and
1-44 reasonably available for examination by an owner or a person
1-45 designated in a written instrument signed by the owner as the
1-46 owner's agent, attorney, or certified public accountant. Except as
1-47 provided by Subsection (c) or (j), an owner is entitled to obtain
1-48 copies of the books and records from the association.

1-49 (c) An attorney's files and records relating to the property
1-50 owners' association, excluding invoices, are not records of the
1-51 association and are not subject to inspection by the owner or the
1-52 owner's authorized representative or to production in a legal
1-53 proceeding. This subsection does not require production of a
1-54 document that is covered by the attorney-client privilege.

1-55 (d) An owner or the owner's authorized representative
1-56 described by Subsection (b) must submit a written request by
1-57 certified mail to the mailing address of the property owners'
1-58 association or the association's authorized representative, as
1-59 reflected on the most current management certificate filed under
1-60 Section 215.013, for access to the books and records of the
1-61 association. The request must describe, in sufficient detail, the

2-1 association's books and records requested by the owner or the
2-2 owner's representative and:

2-3 (1) if an inspection is requested, the association
2-4 shall, on or before the 10th business day after the date the
2-5 association receives the request, send written notice of dates that
2-6 the owner may inspect, during normal business hours, the requested
2-7 books and records to the extent those books and records are in the
2-8 actual physical possession, custody, and control of the
2-9 association; or

2-10 (2) if copies of identified books and records are
2-11 requested, the association shall, to the extent those books and
2-12 records are in the actual physical possession, custody, and control
2-13 of the association, produce copies of the requested books and
2-14 records on or before the 10th business day after the date the
2-15 association receives the request, except as otherwise provided by
2-16 this section.

2-17 (e) If the property owners' association fails to produce the
2-18 books or records requested under Subsection (d) on or before the
2-19 10th business day after the date the association receives the
2-20 request, the association must provide to the requestor written
2-21 notice that:

2-22 (1) informs the requestor that the association is
2-23 unable to produce the information and the specific reasons for that
2-24 inability on or before the 10th business day after the date the
2-25 association received the request; and

2-26 (2) if the association can produce the information,
2-27 notifies the requestor of the date by which the information will be
2-28 sent or made available for inspection to the requesting party,
2-29 which may not be later than the 15th day after the date notice under
2-30 this subsection is given.

2-31 (f) If an inspection is requested or required, the
2-32 inspection shall take place at a mutually agreed on time during
2-33 normal business hours of the property owners' association, and the
2-34 requesting party shall identify the books and records for the
2-35 association to copy and forward to the requesting party.

2-36 (g) A property owners' association may produce books and
2-37 records requested under this section in hard copy, electronic, or
2-38 other format reasonably available to the association.

2-39 (h) A property owners' association board must adopt a
2-40 records production and copying policy that prescribes the costs the
2-41 association will charge for the compilation, production, and
2-42 reproduction of information requested under this section. The
2-43 prescribed charges may include all reasonable costs of materials,
2-44 labor, and overhead. The policy required by this subsection must be
2-45 recorded as a dedicatory instrument. If the policy is not recorded,
2-46 the association may not charge an owner for the compilation,
2-47 production, or reproduction of information requested under this
2-48 section. If the policy is recorded, the requesting owner or the
2-49 owner's representative is responsible for all costs related to the
2-50 compilation, production, and reproduction of the requested
2-51 information based on the amounts prescribed by the policy. The
2-52 association may require advance payment of the estimated costs of
2-53 compilation, production, and reproduction of the requested
2-54 information. If the total of the estimated costs differs from the
2-55 total of the actual costs, the association shall submit a final
2-56 invoice to the owner on or before the 30th business day after the
2-57 date the requested copies are delivered. If the actual total cost
2-58 is higher than the estimated total cost, and the owner fails to
2-59 reimburse the association before the 30th business day after the
2-60 date the invoice is sent to the owner, the association may add the
2-61 amount due to the owner's account as an assessment. If the actual
2-62 total cost is less than the estimated total cost, the association
2-63 shall issue a refund to the owner not later than the 30th business
2-64 day after the date the requested copies are delivered.

2-65 (i) A property owners' association must estimate costs
2-66 under this section using amounts prescribed by the policy adopted
2-67 under Subsection (h).

2-68 (j) Information may be released in an aggregate or summary
2-69 manner that would not identify an individual property owner. Except

3-1 as provided by Subsection (k) and to the extent the information is
 3-2 provided in the meeting minutes, the property owners' association
 3-3 is not required to release or allow inspection of any books or
 3-4 records that identify:

3-5 (1) the dedicatory instrument violation history of an
 3-6 individual owner;

3-7 (2) an owner's personal financial information,
 3-8 including records of payment or nonpayment of amounts due the
 3-9 association;

3-10 (3) an owner's contact information, other than the
 3-11 owner's address;

3-12 (4) an owner's property files or building plans;

3-13 (5) books or records described by Subsection (c);

3-14 (6) any information to which an owner objects to
 3-15 releasing or has not granted approval for releasing; or

3-16 (7) information related to an employee of the
 3-17 association, including personnel files.

3-18 (k) The books and records described by Subsection (j) shall
 3-19 be released or made available for inspection if:

3-20 (1) the express written approval of the owner whose
 3-21 records are the subject of the request for inspection is provided to
 3-22 the property owners' association; or

3-23 (2) a court orders the release of the books and records
 3-24 or orders that the books and records be made available for
 3-25 inspection.

3-26 (l) A property owners' association shall adopt and comply
 3-27 with a document retention policy that includes, at a minimum, the
 3-28 following requirements:

3-29 (1) certificates of formation, bylaws, restrictive
 3-30 covenants, and all amendments to the certificates of formation,
 3-31 bylaws, and covenants shall be retained permanently;

3-32 (2) financial books and records shall be retained for
 3-33 seven years;

3-34 (3) account records of current owners shall be
 3-35 retained for five years;

3-36 (4) contracts with a term of one year or more shall be
 3-37 retained for four years after the expiration of the contract term;

3-38 (5) minutes of meetings of the owners and the board
 3-39 shall be retained for seven years; and

3-40 (6) tax returns and audit records shall be retained
 3-41 for seven years.

3-42 (m) A member of a property owners' association who is denied
 3-43 access to or copies of the association books or records to which the
 3-44 member is entitled under this section may file a petition with the
 3-45 county court at law in which all or part of the property that is
 3-46 governed by the association is located requesting relief in
 3-47 accordance with this subsection. If the county court at law finds
 3-48 that the member is entitled to access to or copies of the records,
 3-49 the county court at law may grant one or more of the following
 3-50 remedies:

3-51 (1) a judgment ordering the association to release or
 3-52 allow access to the books or records;

3-53 (2) a judgment against the association for court costs
 3-54 and attorney's fees incurred in connection with seeking a remedy
 3-55 under this section; or

3-56 (3) a judgment authorizing the owner or the owner's
 3-57 assignee to deduct the amounts awarded under Subdivision (2) from
 3-58 any future regular or special assessments payable to the
 3-59 association.

3-60 (n) If the property owners' association prevails in an
 3-61 action under Subsection (m), the association is entitled to a
 3-62 judgment for court costs and attorney's fees incurred by the
 3-63 association in connection with the action.

3-64 (o) On or before the 10th business day before the date a
 3-65 person brings an action against a property owners' association
 3-66 under this section, the person must send written notice to the
 3-67 association of the person's intent to bring the action. The notice
 3-68 must:

3-69 (1) be sent certified mail, return receipt requested,

4-1 or delivered by the United States Postal Service with signature
 4-2 confirmation service, to the mailing address of the association or
 4-3 the association's authorized representative as reflected on the
 4-4 most current management certificate filed under Section 215.013;
 4-5 and

4-6 (2) describe with sufficient detail the books and
 4-7 records being requested.

4-8 (p) For the purposes of this section, "business day" means a
 4-9 day other than Saturday, Sunday, or a state or federal holiday.

4-10 SECTION 4. Chapter 215, Property Code, is amended by adding
 4-11 Sections 215.016, 215.017, and 215.018 to read as follows:

4-12 Sec. 215.016. NOTICE REQUIRED BEFORE CERTAIN ENFORCEMENT
 4-13 ACTIONS. (a) Before a property owners' association may file a suit
 4-14 against an owner, other than a suit to collect a regular or special
 4-15 assessment or judicial foreclosure under the association's lien, or
 4-16 charge an owner for property damage, the association or its agent
 4-17 must give written notice sent to the owner by certified mail, return
 4-18 receipt requested, to the property address of the owner.

4-19 (b) The notice must:

4-20 (1) describe the violation of the declaration or
 4-21 property damage that is the basis for the suit or charge and state
 4-22 any amount due to the association from the owner; and

4-23 (2) inform the owner that the owner:

4-24 (A) is entitled, as applicable, to a reasonable
 4-25 period to cure the violation and avoid the suit unless the owner was
 4-26 previously given notice and a reasonable opportunity to cure by the
 4-27 association for the same or a similar violation within the
 4-28 preceding six months;

4-29 (B) may request a hearing under Section 215.017
 4-30 on or before the 30th day after the date the owner receives the
 4-31 notice; and

4-32 (C) may have special rights or relief related to
 4-33 the suit or charge under federal law, including, without
 4-34 limitation, the Servicemembers Civil Relief Act (50 U.S.C. app.
 4-35 Section 501 et seq.), if the owner is serving on active military
 4-36 duty.

4-37 Sec. 215.017. HEARING BEFORE BOARD. (a) Except as provided
 4-38 by Section 215.009(c), if the owner is entitled to an opportunity to
 4-39 cure a violation, the owner has the right to submit a written
 4-40 request for a hearing to discuss and verify facts and resolve the
 4-41 matter at issue before a committee appointed by the board of the
 4-42 property owners' association or before the board if the board does
 4-43 not appoint a committee.

4-44 (b) The association shall hold a hearing under this section
 4-45 not later than the 30th day after the date the board receives the
 4-46 owner's request for a hearing and shall notify the owner of the
 4-47 date, time, and place of the hearing not later than the 10th day
 4-48 before the date of the hearing. The board or committee or the owner
 4-49 may request a postponement, and if requested, a postponement shall
 4-50 be granted for a period of not more than 10 days. Additional
 4-51 postponements may be granted by agreement of the parties.

4-52 (c) The notice and hearing provisions of this section and
 4-53 Section 215.016 do not apply if the association files a suit seeking
 4-54 a temporary restraining order or temporary injunctive relief or a
 4-55 suit that includes foreclosure as a cause of action.

4-56 Sec. 215.018. ALTERNATIVE PAYMENT SCHEDULE FOR CERTAIN
 4-57 ASSESSMENTS. (a) A property owners' association shall adopt
 4-58 reasonable guidelines to establish an alternative payment schedule
 4-59 by which an owner may make partial payments to the association for
 4-60 delinquent regular or special assessments or any other amount owed
 4-61 to the association without accruing additional monetary penalties.
 4-62 For purposes of this section, monetary penalties do not include
 4-63 reasonable costs associated with administering the payment plan or
 4-64 interest.

4-65 (b) A property owners' association is not required to enter
 4-66 into a payment plan with an owner who failed to honor the terms of a
 4-67 previous payment plan.

4-68 (c) A property owners' association shall file the
 4-69 association's guidelines under this section in the real property

5-1 records of each county in which any portion of the subdivision is
5-2 located.

5-3 SECTION 5. This Act takes effect September 1, 2013.

5-4 * * * * *